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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEPHEN WILLIAMS,

CASE NO. C-05-~~01734~~ JT <sup>3147 MMC</sup>

Plaintiff,

VS.

SBC COMMUNICATIONS, INC.,  
MARILYN MOOMAU, an individual, and  
DOES 1-50, inclusive.

**STIPULATION OF DISMISSAL  
OF FIFTH AND SIXTH CAUSES OF  
ACTION AND ORDER THEREON**

## Defendants.

1 IT IS HEREBY STIPULATED by and between the parties to this action, through their  
2 designated counsel, that the following causes of action be and hereby are dismissed pursuant to  
3 FRCP 41(a)(1),<sup>1</sup> without any prejudice to the right by Defendants SBC Communications, Inc., and  
4 Marilyn Moomau to oppose any Motion for Remand by Plaintiff.

5 1. Plaintiff's Fifth Cause of Action for Interference/Restraint/Denial of Rights  
6 under the Family Medical Leave Act ("FMLA") [29 USC §2615(a)(1); 29  
7 CFR §825.220(a)(1)]; and  
8 2. Plaintiff's Sixth Cause of Action for Discrimination, Discharge and  
9 Retaliation in Violation of the FMLA [29 USC §2615(a)(2); 29 CFR  
§825.220(a)(2), (3), (c)].

10 Dated: September 2, 2005

11 Law Offices of David S. Secrest,  
12 A Professional Corporation

13 By: /s/ David S. Secrest  
14 David S. Secrest  
15 Attorney for Plaintiff  
Stephen Williams

16 Dated: September 2, 2005

17 Robert Joseph Pia, Esq.  
18 Law Offices of Robert Pia

19 By: /s/ Robert Joseph Pia  
20 Attorneys for Defendants  
21 SBC Communications, Inc., and Marilyn Moomau

22 IT IS SO ORDERED:

  
23 Hon. Edward M. Chen  
24 United States Magistrate Judge

25 Maxine M. Chesney  
26 United States District Judge

27 Dated: September 21, 2005

28  
1 <sup>1</sup> Where plaintiff wants to drop certain claims but not to dismiss any defendant, the proper procedure  
2 is to amend the complaint. FRCP 15(a); *Ethridge v. Harbor House Restaurant* (9<sup>th</sup> Cir., 1988), 861 F2d  
3 1389, 1392. "Alternatively, the parties may agree that certain claims will not be pursued or will be  
4 dismissed; or that the pleadings be amended to eliminate such claims. Such agreement is no doubt  
5 enforceable even without a formal motion to amend or dismiss." Schwarzer, Tashima, and Wagstaffe,  
6 California Practice Guide: Federal Civil Procedure Before Trial (Rutter Group, 2004); §§16:311-312.